

1 Timothy M. Frank (California Bar No. 263245)

2 timothy.frank@hnbllc.com

3 Joseph H. Boyle (*pro hac vice*)

4 joe.boyle@hnbllc.com

5 Stephen M. Ferguson (*pro hac vice*)

6 stephen.ferguson@hnbllc.com

7 HAGAN NOLL & BOYLE LLC

8 820 Gessner, Suite 940

9 Houston, Texas 77024

10 Telephone: (713) 343-0478

11 Facsimile: (713) 758-0146

12 David A. Van Riper (California Bar No. 128059)

13 dave@vanriperlaw.com

14 VAN RIPER LAW

15 1254 Irvine Blvd., Suite 200

16 Tustin, California 92780-3571

17 Telephone: (714) 731-1800

18 Facsimile: (714) 731-1811

19 Attorneys for Plaintiff DISH Network L.L.C.

20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

DISH NETWORK L.L.C.,

Plaintiff,

v.

JADOO TV, INC. et al.,

Defendants.

Case No. 2:18-cv-9768-FMO (KSx)

**PLAINTIFF DISH NETWORK L.L.C.'S  
EX PARTE APPLICATION TO  
MODIFY SCHEDULING ORDER**

Honorable Fernando M. Olguin

[Ferguson Decl. in Support of Ex Parte  
Application and Proposed Order Filed  
Concurrently]

1 Plaintiff DISH Network L.L.C. (“DISH”) submits this ex parte application and  
 2 respectfully requests that the Court modify the Scheduling Order (Dkt. 50), as  
 3 amended by the Order Regarding Further Proceedings (Dkt. 101), by continuing the  
 4 case deadlines because of the ongoing bankruptcy stay as to JadooTV, related  
 5 informal standstill agreement as to Sohail, and extensive outstanding discovery.  
 6 DISH has moved to lift the stay as to JadooTV and anticipates it and the informal  
 7 standstill as to Sohail will be lifted during a hearing with the bankruptcy court on  
 8 January 8, 2020. Defendants Jadoo TV, Inc. (“JadooTV”) and Sajid Sohail (“Sohail”)  
 9 do not oppose the Court resetting the deadline for fact discovery to April 8, 2020, and  
 10 adjusting the other deadlines accordingly. (Ferguson Decl. ¶ 22.)

11 The only dispute is the deadline for mediation and DISH’s position is set forth  
 12 in Section III.C, wherein DISH requests that the Court also reset the deadline for  
 13 mediation to April 8, 2020. (*Id.*)

## 14 I. PROCEDURAL HISTORY

- 15 1. The modified Scheduling Order includes the following case deadlines:
  - 16 a. Completion of fact discovery: December 9, 2019;
  - 17 b. Completion of settlement conference: December 9, 2019;
  - 18 c. Initial expert witness disclosures: December 23, 2019;
  - 19 d. Rebuttal expert witness disclosures: January 23, 2020;
  - 20 e. Completion of expert discovery: February 24, 2019;
  - 21 f. Dispositive motions: March 24, 2020;
  - 22 g. Memoranda of Contentions of Fact and Law; Witness Lists;  
 23 Pretrial Exhibit Stipulation; Joint Motions in Limine: May 22,  
 24 2020;
  - 25 h. Proposed Pretrial Conference Order; Joint Jury Instructions;  
 26 Disputed Jury Instructions; Joint Proposed Verdict Form; Joint  
 27 Statement of the Case; Proposed Additional Voir Dire Questions;  
 28 Reply Memoranda to Motions in Limine: May 29, 2020;

- 1                   i.     Final pretrial conference: June 12, 2020; and  
 2                   j.     Trial: June 30, 2020.

3 (Dkt. 101 at 1-2.)

4       2.     This is the second request to continue the case deadlines. (Ferguson  
 5 Decl. ¶ 21.) The Court granted the parties' Stipulation and Joint Motion to Modify  
 6 the Scheduling Order (Dkt. 100) pursuant to an Order Regarding Further Proceedings  
 7 entered August 28, 2019 (Dkt. 101). Pursuant to this order, the case deadlines in the  
 8 Scheduling Order (Dkt. 50) were continued for approximately three months.  
 9 (Ferguson Decl. ¶ 21; *see* Dkt. 50 at 17-18; Dkt. 101 at 1-2.)

## 10                  **II.    LEGAL STANDARD**

11       3.     “A schedule may be modified only for good cause and with the judge’s  
 12 consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily  
 13 considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth*  
 14 *recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “The district court may modify  
 15 the pretrial schedule if it cannot reasonably be met despite the diligence of the party  
 16 seeking the extension.” *Id.*

## 17                  **III.    GOOD CAUSE TO MODIFY SCHEDULING ORDER**

### 18                  **A.    Status of JadooTV’s Bankruptcy**

19       4.     JadooTV filed a Chapter 11 bankruptcy petition on May 31, 2019.  
 20 (Ferguson Decl. ¶ 1; Dkt. 78.)

21       5.     On August 19, 2019, DISH filed a Motion for Relief from Stay in the  
 22 bankruptcy court, seeking to lift the automatic stay as to JadooTV. (Ferguson Decl.  
 23 ¶ 2.)

24       6.     On August 30, 2019, JadooTV filed an adversary proceeding against  
 25 DISH in the bankruptcy court, including a Motion for Preliminary Injunction and  
 26 Temporary Restraining Order, seeking to extend the bankruptcy stay to Sohail.  
 27 (Ferguson Decl. ¶ 3.)

1       7. On October 8, 2019, the bankruptcy court entered an order with respect  
 2 to DISH's Relief from Stay Motion and JadooTV's Motion for Preliminary  
 3 Injunction. Pursuant to this order:

- 4           a. this action is stayed as against JadooTV, other than such discovery as  
                  JadooTV agrees to produce or the bankruptcy court orders JadooTV  
                  to produce;
- 5           b. DISH agreed to an informal standstill with regard to litigation of the  
                  claims against Sohail in this action";
- 6           c. the stay against JadooTV and informal standstill against Sohail are  
                  conditioned upon JadooTV filing a plan of reorganization by no later  
                  than December 31, 2019; and
- 7           d. a status conference is set with the bankruptcy court on January 8, 2020  
                  to determine whether the stay as to JadooTV and informal standstill  
                  with respect to Sohail should be extended or terminated.

15 (Ferguson Decl. ¶ 4, Ex. 1 at ¶¶ 1-3.)

16       **B. Status of Discovery**

17       8. DISH has been diligent in conducting discovery. (Ferguson Decl. ¶¶ 5-  
 18 15, 17-20.)

19       9. On August 14, 2019, the Court granted DISH's motion to compel  
 20 Sohail's production of documents, and awarded DISH \$12,046.12 in expenses finding  
 21 Sohail's failure to produce discovery was unjustified. (Ferguson Decl. ¶ 13; Dkts. 96,  
 22 118.) Sohail provided supplemental responses to DISH's requests for production on  
 23 August 26, 2019, and for each request stated:

24       After a reasonable and diligent search of his personal email accounts or  
 25 other electronically stored databases, home offices or other locations  
 26 and/or repositories that are separate from facilities owned and/or  
 27 controlled by JadooTV, Sohail responds that he does not have any non-

1           privileged documents in his possession, custody, or control that are  
 2           responsive to this request.

3 (Ferguson Decl. ¶ 14, Ex. 2.) Sohail did not produce any documents pursuant to the  
 4 Court’s order granting DISH’s motion to compel Sohail’s production of documents,  
 5 and Sohail has not produced any documents in this action. (*Id.*)

6         10. The bankruptcy court is permitting limited discovery to proceed against  
 7 JadooTV. (Ferguson Decl. ¶ 15.) JadooTV produced its first 10 documents in this  
 8 action on October 9 and October 10, 2019. (*Id.*) JadooTV produced additional  
 9 documents on November 8 and November 12, 2019. (*Id.*)

10        11. DISH cannot reasonably meet the case deadlines due to the automatic  
 11 stay as to JadooTV, informal standstill agreement as to Sohail, and extensive  
 12 outstanding document production from JadooTV and non-parties. (Ferguson Decl. ¶  
 13 20.) Defendant Haseeb Shah’s (“Shah”) motion to dismiss is also under submission.  
 14 (*Id.*; Dkts. 74, 88.)

15           **C. The Court Should Continue the Mediation Deadline.**

16         DISH’s position has always been that mediation should be scheduled after fact  
 17 discovery has been completed. (Dkt. 41 at 11:15-18.) On two prior occasions, the  
 18 Court agreed that the deadlines for the completion of mediation and fact discovery  
 19 should be the same. (Dkt. 50 at 10, 18-19; Dkt. 101 ¶¶ 2, 4.) Mediation is premature  
 20 and should be continued because: (1) JadooTV and Sohail have failed to produce  
 21 necessary documents; (2) JadooTV’s pending bankruptcy has stayed this action as to  
 22 JadooTV; and (3) a necessary Defendant will not be participating.

23         Mediation is premature because of JadooTV and Sohail’s own actions,  
 24 including: (1) failure to produce any documents requiring DISH to file a motion to  
 25 compel; (2) JadooTV filing bankruptcy a week after DISH filed its motion to compel;  
 26 (3) Sohail’s failure to produce any documents in response to the Court’s order  
 27 compelling his production; and (4) JadooTV’s limited production during the

bankruptcy stay. (Ferguson Decl. ¶¶ 1, 12-15.) DISH does not have sufficient documents to have a meaningful mediation.

3 Mediation is also premature because of JadooTV’s pending bankruptcy. DISH  
4 has filed a Motion for Relief from Stay, however the bankruptcy court is temporarily  
5 keeping the stay in place apart from some limited document production while  
6 JadooTV seeks funding in order to file a proposed Chapter 11 plan. (Ferguson Decl.  
7 ¶ 4, Ex. 1.) The bankruptcy Court has set December 31, 2019, as the deadline for  
8 JadooTV to file its proposed plan, and has set a status conference on January 8, 2020,  
9 to discuss the plan and whether the stay should lift at that time. (*Id.*)

Finally, mediation is premature because neither Defendant Shah, nor his counsel, will be participating, presumably because of Shah’s pending motion to dismiss.<sup>1</sup> (See Ferguson Decl. ¶ 16, Ex. 3; Dkts. 74, 88.) Shah is a necessary party to mediation because he is the direct copyright infringer and JadooTV and Sohail’s agent providing Jadoo users in the United States with access to DISH’s Protected Channels and the content that airs on the Protected Channels. (Dkt. 1 ¶¶ 4, 9, 48-50, 52, 63-71; Dkt. 81 at 18:1-21:6.) DISH does not believe mediation will be successful without the participation of Shah.

18 The Court should continue the mediation deadline to April 8, 2020 – the  
19 requested deadline for the completion of fact discovery.

## IV. CONCLUSION

21 There is good cause to modify the Scheduling Order because of the bankruptcy  
22 stay as to JadooTV, the related standstill agreement as to Sohail, and the extensive  
23 outstanding discovery. DISH respectfully requests that the Court modify the  
24 Scheduling Order to set the following case deadlines:

25 a. Completion of fact discovery: April 8, 2020 (three months after the  
26 January 8, 2020 bankruptcy court hearing in which DISH anticipates

<sup>28</sup> ¶ 1 Sohail paid Shah's legal fees to draft and file Shah's motion to dismiss. (Dkt. 74-1 ¶ 39.)

the stay as to JadooTV and informal standstill agreement as to Sohail will be lifted);

- b. Completion of settlement conference: April 8, 2020;
  - c. Initial expert witness disclosures: April 22, 2020;
  - d. Rebuttal expert witness disclosures: May 22, 2020;
  - e. Completion of expert discovery: June 22, 2020;
  - f. Dispositive motions: July 22, 2020;
  - g. Memoranda of Contentions of Fact and Law; Witness Lists; Pretrial Exhibit Stipulation; Joint Motions in Limine: September 25, 2020;
  - h. Proposed Pretrial Conference Order; Joint Jury Instructions; Disputed Jury Instructions; Joint Proposed Verdict Form; Joint Statement of the Case; Proposed Additional Voir Dire Questions; Reply Memoranda to Motions in Limine: October 2, 2020;
  - i. Final pretrial conference: October 16, 2020; and
  - j. Trial: November 3, 2020.

The parties' conferred numerous times via email, in person, and by telephone concerning this request to continue the case deadlines. (Ferguson Decl. ¶ 22.) JadooTV and Sohail agree to continue the case deadlines as proposed above, excluding the mediation deadline, which is currently December 9, 2019. (*Id.*)

Pursuant to Local Rule 7-19, the name, address, telephone number, and email address of counsel for the opposing party is:

Mark Punzalan  
mark@chanpunzalan.com  
CHAN PUNZALAN LLP  
2000 Alameda de las Pulgas, Suite 154  
San Mateo, CA 94403  
Telephone: 650.362.4150  
Fax: 650.362.4151

1 Dated: November 13, 2019 Respectfully submitted,

2 By: /s/ Stephen M. Ferguson

3 Stephen M. Ferguson (*pro hac vice*)

4 stephen.ferguson@hnbllc.com

5 Timothy M. Frank (California Bar No. 263245)

6 timothy.frank@hnbllc.com

7 Joseph H. Boyle (*pro hac vice*)

8 joe.boyle@hnbllc.com

9 HAGAN NOLL & BOYLE LLC

10 820 Gessner, Suite 940

11 Houston, Texas 77024

12 Telephone: (713) 343-0478

13 Facsimile: (713) 758-0146

14 David A. Van Riper (California Bar No. 128059)

15 dave@vanriperlaw.com

16 VAN RIPER LAW

17 1254 Irvine Blvd., Suite 200

18 Tustin, California 92780-3571

19 Telephone: (714) 731-1800

20 Facsimile: (714) 731-1811

21 *Attorneys for Plaintiffs DISH Network L.L.C.*